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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>UBER TECHNOLOGIES, INC., et al.,<br>Defendants and Appellants. | A153674<br><br>(City & County of San Francisco Super. Ct. No. CGC-14-543120) |

Plaintiff, the People of the State of California, represented by the District Attorneys of San Francisco and Los Angeles Counties (the district attorneys), move to dismiss an appeal from a postjudgment discovery order filed by defendants Uber Technologies, Inc., Rasier LLC, and Rasier-CA, LLC (collectively Uber). The order compels Uber to produce data and documents that the district attorneys seek in order to determine whether Uber is complying with its obligations under a stipulated judgment in this action. The district attorneys brought the action seeking injunctive relief and civil penalties for Uber's alleged violations of the unfair competition law (Bus. & Prof. Code, § 17200 et seq.) and false advertising law (Bus. & Prof. Code, § 17500 et seq.). The judgment required Uber to promptly pay a $10 million civil penalty and enjoined it from making several types of misleading public statements. The judgment also requires Uber to later pay an additional $15 million penalty unless the district attorneys determine, upon review of Uber's conduct in the two years following entry of the judgment, that it has complied with the injunctive provisions of the judgment.

Before expiration of the two-year period, the district attorneys served a production request to which Uber objected. The trial court, exercising jurisdiction preserved by the stipulated judgment, issued the discovery order at issue. Uber filed this appeal, which the district attorneys have moved to dismiss on the ground the order is not appealable. Uber insists that it is and, in the alternative, requests that we treat the appeal as a petition for a writ of mandate. We conclude that the order is not appealable, that no extraordinary circumstances justify mandamus relief, and that the appeal must therefore be dismissed.

**Factual and Procedural Background**

The relevant facts are not in dispute. In 2013, the California Public Utilities Commission (CPUC) created a new category of licensable public carrier—the transportation network company—and licensed one of the Uber subsidiaries that is a codefendant in this action in that category. The CPUC requires transportation network companies to implement zero tolerance policies (ZTP) regarding their drivers' use of drugs or alcohol while driving, to publish their policies in various media, and to file annual reports on their handling of customers' ZTP complaints. In early 2014, Uber published a ZTP stating that it "does not tolerate the use of drugs or alcohol by drivers using the Uber app."

This litigation began in December 2014 when the district attorneys sued Uber for allegedly violating the unfair competition and false advertising laws by misrepresenting the process by which it screens the criminal histories of potential drivers, as well as other, non-safety-related conduct. Neither the pleadings nor the ultimate settlement made any specific reference to the ZTP or to Uber's representations regarding the monitoring of drivers' use of alcohol or drugs.

In April 2016, the court entered a stipulated judgment that includes injunctive provisions barring Uber from making specified misrepresentations or misleading omissions regarding, among other topics, safety.[1] The judgment required Uber to pay a

[1] Paragraph 6 of the stipulated judgment provides in part: "Pursuant to Business and Professions Code sections 17203 and 17535, defendants are hereby subject to the

$10 million penalty immediately, and an additional $15 million penalty unless the district attorneys determine, after reviewing Uber's conduct in the two years following entry of the judgment, that it has complied with the injunctive provisions.

To facilitate that review, the judgment requires Uber to produce certain documents and authorizes the district attorneys to request "any additional information . . . reasonably necessary to determine [Uber's] compliance." The judgment preserves the trial court's jurisdiction to issue orders carrying out its terms. It also provides that if the district attorneys determine after two years that Uber did not comply with the judgment and must therefore pay another $15 million, Uber may then ask the trial court to review the reasonableness of that determination.

In April 2017, the CPUC began an administrative proceeding to investigate Uber's compliance with the ZTP requirement. A month later the district attorneys issued the discovery request at issue, seeking information from Uber related to its ZTP in order to assess Uber's compliance with the injunctive provision regarding statements about safety. Uber objected, contending that the judgment cannot be read to encompass its ZTP or statements related to that policy.

In October 2017, Uber and the CPUC's enforcement division reached a settlement concerning Uber's compliance with the ZTP regulation and submitted it to the CPUC for approval.[2] In December 2017, the district attorneys applied to the trial court for an order compelling Uber to produce the ZTP-related information. Uber opposed the application

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following mandatory and prohibitory injunctive provisions related to their representations to the public about safety of the transportation arranged through the use of their services and the measures defendants take to ensure customer safety: [¶] A. Defendants shall not make any false or misleading representations or material omission, whether in the form of a comparison or otherwise, regarding the safety of the transportation arranged through the use of their services, or the measures defendants take to ensure customer safety."

[2] Uber's requests for judicial notice of an October 2018 decision by the CPUC adopting the settlement agreement and of January 2019 filings in a CPUC administrative proceeding regarding ZTP rules is denied. The documents are not relevant to the appealability of the order under review.

and, in the alternative, requested that the court defer ruling on the application until the CPUC ruled on the motion to approve its settlement with the CPUC's enforcement division. The trial court declined the request to defer and granted in part the district attorneys' motion to compel production of the requested information, holding that the ZTP is "directly related to the measures [Uber] takes to ensure 'customer safety,' " and that the documents will help the district attorneys "assess the truth of Uber's zero[-]tolerance representations to the public."[3]

Uber filed a notice of appeal, and argues that the order is appealable as a postjudgment order under Code of Civil Procedure section 904.1, subdivision (a)(2) and, in the alternative, that we should treat its appeal as a petition for a writ of mandate. In response to Uber's request, we deferred ruling on the district attorneys' motion to dismiss the appeal until the record had been prepared and the merits briefed. Having now considered the parties' arguments, we conclude that the appeal should be dismissed.

**Discussion**

The parties agree that there are three requirements for a postjudgment order to be appealable, as summarized in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651–652. There the Supreme Court referred to "[t]he prerequisite that the underlying judgment must itself be final" (*id.* at p. 651, fn. 3), the requirement "that the issues raised by the appeal from the order must be different from those arising from an

[3] Uber had initially produced some of the requested information, and the court denied portions of the district attorneys' request as unreasonably burdensome. Among the information that Uber was ordered to produce was "information for each zero tolerance complaint by a rider in California" and "for each collision involving a driver partner of the enjoined parties in California," including date and time of the incident or collision, when the complaint or collision report was filed, the complaint name or number, the name of the involved driver, when a customer service representative received and reviewed the complaint, whether the complaint was investigated, the current status and any outcome of the investigation, all communications with the driver concerning the driver's status, and "all versions of every representation the enjoined parties have made to the public in California regarding the enjoined parties' zero tolerance policy" and "regarding the enjoined parties' policy for investigating collisions."

appeal from the judgment" (*id.* at p. 651), and the requirement that " 'the order must either affect the judgment or relate to it by enforcing it or staying its execution' " (*id.* at pp. 651–652). A corollary of this final requirement, the court explained, is that a postjudgment order is not appealable if the order, "although [entered] following an earlier judgment," is "more accurately understood as being preliminary to a later judgment, at which time [it] will become ripe for appeal." (*Id.* at p. 652.)

The district attorneys argue that this appeal does not satisfy the requirement that the judgment preceding the order be appealable—both because stipulated judgments generally are not appealable and because Uber waived the right to appeal from the judgment—and that it does not satisfy the requirement that the order not be preliminary to further proceedings that will yield a separate appealable judgment. We need not determine whether this appeal satisfies the first of these requirements because it is unmistakably clear that it does not satisfy the second: the production order is, like most discovery orders, preliminary to a determination that will itself be subject to appeal.

This conclusion finds support in *Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211 (*Roden*), a closely analogous case in which the Fourth Appellate District held that a party could not appeal from a discovery order that followed a stipulated judgment that Roden was entitled to benefits following the termination of his employment. The order required his former employer's successor to produce documents relevant to whether it was complying with the judgment. The postjudgment discovery order was a mere prelude to likely further proceedings that would yield an appealable order. (*Id.* at pp. 217–218.)

Uber insists that *Roden* is a "horse of a different color." It contends that in *Roden* the documents at issue were necessary to determine only the amount of benefits to which Roden was entitled, whereas "here, the challenged order finally resolved the parties' rights vis-à-vis the ZTP issue." However, although the trial court's explanation in granting the production order was that "Uber's policies and practices regarding zero tolerance complaints and collisions in California are directly related to the measures Uber takes to ensure 'customer safety' " and are thus within the scope of the stipulated

judgment's injunctive provisions, the order is not a final determination of the scope of the injunctive provisions, much less of whether Uber has complied with those provisions.

If the district attorneys should determine that Uber's ZTP or related public statements are misleading and, based on that determination, seek to enforce the additional $15 million penalty, and if Uber challenges that determination as it will have the right to do, the trial court then will be required to decide if the injunctive provisions do indeed encompass that subject. At that point, Uber will be free to argue that the trial court should re-examine whether the judgment encompasses the ZTP. (See, e.g., *Tippett v. Terich* (1995) 37 Cal.App.4th 1517, 1523 & fn. 2, abrogated on other ground by *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163.) The trial court's resolution of the issue in this discovery order will in no way prevent it from deciding the issue differently in ruling on a motion to review the district attorneys' determination that Uber did not comply with the judgment. If the trial court again concludes that the injunctive provisions do encompass the ZTP, Uber will be entitled to review of that conclusion on appeal from the trial court's order.[4] If the trial court concludes otherwise, or if it concludes that Uber has complied with the injunctive provisions so interpreted, the correctness of the trial court's reasoning in the current discovery order will be moot.

Uber also argues that, while the judgment in *Roden* "specifically contemplated" future proceedings to quantify Roden's benefits, here "there are no such certain future proceedings . . . , only potential disputes regarding Uber's compliance." Uber's argument that this case involves "amporphous potential 'future' proceedings," while *Roden* involved "limited, definite additional proceedings," is simply wrong. The underlying

[4] We expressly disagree with any implication in the district attorneys' argument that Uber's waiver of the right to appeal from the stipulated judgment waived its right to appeal from the subsequent determination, over which the stipulated judgment reserves the trial court's jurisdiction, whether Uber has complied with the injunctive provisions of the judgment and should be relieved of the additional $15 million penalty. (*Ruiz v. California State Automobile Assn. Inter-Insurance Bureau* (2013) 222 Cal.App.4th 596, 606; *Water Replenishment Dist. of Southern California v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1069–1070.)

judgments in *Roden* and in this case both anticipate the possibility of further proceedings. In *Roden*, the party seeking to appeal a postjudgment discovery order argued that no specific motion was then pending as to which "the discovery order could be construed as preliminary," and that "whether Roden, at some future time, may file a motion to enforce the judgment is entirely speculative." (*Roden, supra,* 130 Cal.App.4th at pp. 217–218.) Disagreeing, the Court of Appeal noted that "the parties have a monumental disagreement as to the [amount of] the [retirement] benefits to be paid pursuant to the judgment." (*Id.* at p. 218.) In this case, the parties may well have a $15 million disagreement over the amount that Uber is required to pay. It is true that the retirement plan administrator in *Roden* had apparently already made a determination of the amount due to Roden with which he substantially disagreed. (*Ibid*.) Roden, however, had not filed a motion to bring that dispute before the court, and it remained possible, as in any case, that the parties might settle their dispute. Any distinction between *Roden* and this case as to the likelihood of further proceedings is one of degree, not of kind.[5]

The only purpose of the discovery order at issue in the present case is to aid the process by which the district attorneys will first evaluate whether Uber has complied with the judgment and, if necessary, the trial court will review that determination. The present order is preliminary to that process and therefore is not appealable. If the district

[5] Uber also insists that the Fourth Appellate District has narrowed *Roden*'s analysis of the relevance of likely future proceedings in two cases involving "postjudgment third party discovery orders in judgment[-]enforcement proceedings." (*Finance Holding Co. LLC v. The American Institute of Certified Tax Coaches, Inc.* (2018) 29 Cal.App.5th 663, 674, citing *Macaluso v. Superior Court* (2013) 219 Cal.App.4th 1042.) Such orders, however, present a fundamentally different appealability issue than postjudgment *first-party* discovery orders like this one. *Macaluso* recognized this distinction, stating that "*Roden* has no application to the instant [third-party discovery order] case" because the postjudgment order in *Roden* "resolved disputes between parties to an ongoing lawsuit preparatory to … a later final judgment," while the third-party appellant in *Macaluso* "was not a party to an ongoing lawsuit from which he might later be able to appeal and challenge the merits of the ruling on his objections to the subpoena." (*Macaluso, supra*, 219 Cal.App.4th at p. 1050.)

attorneys determine that Uber must pay the additional $15 million penalty, a motion to review that determination will almost surely follow, yielding an order that will be appealable. Should the parties accept the determination of the district attorneys, the issues Uber now raises will be moot.

Uber's request that we treat its appeal as a petition for a writ of mandamus does not reflect sufficient appreciation that, as *Roden* put it, "extraordinary relief is supposed to be extraordinary." (*Roden*, *supra*, 130 Cal.App.4th at p. 213.) Among the prerequisites for securing review by extraordinary writ, two are dispositive here: the ruling at issue must be clearly erroneous, and the unavailability of immediate appellate review must threaten substantial prejudice not subject to correction on a later appeal. (See *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273–1274; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group) ¶¶ 15:35–15:37.) In discovery disputes, such prejudice usually involves a breach of attorney-client or other privileges, or violations of privacy or other constitutional rights, especially of third parties. (Eisenberg et al., *supra*, ¶ 15:43.)

The parties' briefs on the merits debate at length whether the injunctive provisions of the stipulated judgment should be interpreted to apply to Uber's zero tolerance policy—i.e., whether Uber's pronouncement that it does not tolerate drug or alcohol use by its drivers is a representation "regarding the safety of the transportation arranged through the use of [its] services, or the measures [it] take[s] to ensure customer safety." While the district attorneys contend that refusing to tolerate intoxicated driving is a "measure . . . to ensure customer safety," Uber argues that the district attorneys never once alleged that Uber's deception of the public involved its ZTP. The stipulated judgment lists several specific misleading statements that Uber must not make, and does not mention statements touching on its ZTP. This is thus a classic case in which one party argues that the plain language of a general provision encompasses a specific matter, while the other argues that the drafters never contemplated that specific matter. For present purposes, it suffices to say that each side's arguments are at least colorable, and that the trial court's conclusion that paragraph 6(A) of the stipulated judgment should be read to

encompass misleading statements about Uber's zero tolerance policy is by no means clearly erroneous as a matter of law.

Uber does not contend that producing the information and materials that it has been ordered to produce will cause it substantial prejudice. Instead, Uber states that the trial court's ruling "subjects Uber to substantial liability—$15 million at the very least, not only for ZTP but for any statement that could be interpreted as 'impacting' safety." But the discovery order does not subject Uber to any liability. The information that Uber has been ordered to produce may have some effect on the ultimate determination of whether the additional $15 million penalty may be imposed, but that determination is not now before us, and will be subject to review when it is made.

Even without a clear error of law or irremediable prejudice, Uber argues, writ review is appropriate because there is " 'uncertainty . . . in the law with respect to the appealability of the order in question.' " (Quoting *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370–372.) But our determination that this discovery order is not appealable is by no means novel. The law concerning the appealability of such an order is not so unsettled as to require urgent clarification. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 158, p. 234.)

Finally, Uber suggests that the logic of the order empowers the district attorneys to seek further discovery as to Uber's statements regarding any aspect of its operations that touches on customer safety, making writ review necessary to spare Uber from the spiraling burden that might ensue, and to guide the trial court in resolving likely future disputes. This case, however, does not concern the interpretation of a statute that will govern the general public's conduct in the future. This dispute concerns only a stipulated judgment governing two parties for a limited period. The speculative possibility of future abuse does not warrant extraordinary writ review of an order resolving this single discovery dispute.

**Disposition**

The appeal is dismissed.

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POLLAK, P. J.

WE CONCUR:

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STREETER, J.

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TUCHER, J.